

SANT.002CN

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ARTURO SANTANA GALLEGO

Petitioner,

v.

SANTANA'S GRILL, INC.

Registrant.

Cancellation No. 92043152

Registration No. 2,682,978

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, on

September 8, 2004

(Date)
Frederick S. Berretta

Frederick S. Berretta

REGISTRANT'S ANSWER TO PETITION TO CANCEL

Registrant Santana's Grill, Inc. hereby answers Petitioner's Petition to Cancel as follows:

1. Registrant denies the allegations of paragraph 1.
2. Registrant admits that Petitioner has never used the mark at issue in this Cancellation Proceeding and admits the remaining allegations of paragraph 2.
3. Registrant admits the allegations of paragraph 3 as to the San Diego, California restaurant location. Registrant lacks sufficient knowledge and information to admit or deny the remaining allegations of paragraph 3, and on that basis denies those allegations.
4. Registrant lacks sufficient knowledge and information to admit or deny the allegations of paragraph 4, and on that basis denies those allegations.
5. Registrant admits that Petitioner transferred ownership of the 1480 Rosecrans Street, San Diego, California restaurant location to Abelardo Santana Lee and Claudia Vallarta Santana on or about December of 1991 and removed himself as an owner. Registrant denies the remaining allegations of paragraph 5.
6. Registrant lacks sufficient knowledge and information to admit or deny the allegation that Registration No. 2,682,978 will affect Arturo Castaneda's ability to pay Petitioner, and on that basis denies that allegation. Registrant denies that Arturo Castaneda has the right to use the mark "SANTANA'S MEXICAN FOOD." Registrant admits the remaining allegations of paragraph 6.



7. Registrant lacks sufficient knowledge and information to admit or deny the allegations of paragraph 7, and on that basis denies those allegations.

8. Registrant admits that it is a California corporation registered with the Secretary of State of the State of California and that it was formed on or about April 3, 1998.

9. Registrant denies the allegations of paragraph 9.

10. Registrant admits the allegations of paragraph 10 insofar as such admission does not preclude the fact that Registrant developed the mark "SANTANA'S MEXICAN FOOD ... ES MUY BUENO HOME OF THE CALIFORNIA BURRITO and design" and on or about 1993 decided to start using it for Registrant's restaurants.

11. Registrant denies the allegations of paragraph 11.

12. Registrant denies the allegations of paragraph 12.

13. Registrant denies the allegations of paragraph 13.

14. Registrant admits that its use of the mark was and is use "in commerce."

15. Registrant denies the allegations of paragraph 15.

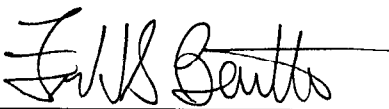
16. Registrant admits that the mark having Registration No. 2,682,978 is involved in litigation, Case No. 03-CV 2340 L (RBB) in the United States District Court for the Southern District of California. Registrant denies the remaining allegations of paragraph 16.

17. Paragraph 17 states only the relief sought by Petitioner and therefore requires no response. To the extent a response is required, Registrant denies the allegations of paragraph 17.

Respectfully submitted,

KNOBBE MARTENS OLSON & BEAR LLP

Dated: September 8, 2004

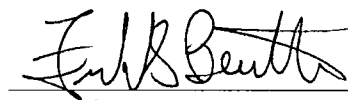
By: 

Frederick S. Berretta (Reg. No. 38,004)
AnneMarie Kaiser (Reg. No. 37,649)
550 West C Street, 12th Floor
San Diego, CA 92101
(619) 235-8550
Attorneys for Registrant
Santana's Grill, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **REGISTRANT'S ANSWER TO PETITION TO CANCEL** upon Petitioner's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on September 8, 2004, addressed as follows:

George W. Finch
VAN ETEN SUZUMOTO & BECKET LLP
1620 26th Street, Suite 6000 North
Santa Monica, CA 90404



Frederick S. Berretta

S:\DOCS\MZGMZG-1107.DOC
083004